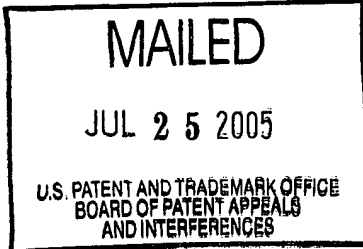


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. DAVIS
and
MICHAEL R. FLANNERY

Application 10/034,110

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on July 8, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

On March 24, 2005, appellants filed a Reply Brief in response to the Supplemental Examiner's Answer mailed June 11, 2004. Page 2 of the Reply Brief states:

Specifically, appellants formally offer to amend claims 1 and 34 Copies of claims 1 and 34 as amended in this matter are attached as Exhibit A.

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The Manual of Patent Examining Procedure (MPEP) (Eighth Edition, Rev. 2, May 2004) clearly states that any

[a]mendments, affidavits, and/or other evidence must be submitted in papers separate from the reply brief, and the entry of such papers is subject to the provisions of 37 CFR 1.116 and 37 CFR 1.195. A paper that contains an amendment (or evidence) is not a reply brief within the meaning of 37 CFR 1.193(b). Such a paper will not be entitled to entry simply because it is characterized as a reply brief.

In addition, a Terminal Disclaimer was filed on August 15, 2002. It is not clear from the record whether the Terminal Disclaimer has been considered and properly processed.

Accordingly, it is

ORDERED that the application is returned to the

Examiner:

1) for notification to appellants to submit the amendment included in the Reply Brief filed March 24, 2005 in proper format and on a separate paper (If the amendment is entered, the Examiner will need to issue a supplemental Examiner's Answer which contains a correct copy of the claims, or appellants will need to submit a new Appendix to the Appeal Brief filed November 10, 2003); and

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2. for consideration and proper processing of the Terminal Disclaimer filed August 15, 2002; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

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DMS/psb

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